

SERVED: December 3, 1998

NTSB Order No. EA-4729

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 1st day of December, 1998

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|----------------------------------|---|-----------------|
| _____ |) | |
| JANE F. GARVEY, |) | |
| Administrator, |) | |
| Federal Aviation Administration, |) | |
| |) | |
| Complainant, |) | |
| |) | Docket SE-15212 |
| v. |) | |
| |) | |
| BRUCE EDWARD MINTER, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

ORDER DISMISSING INTERLOCUTORY APPEAL

Administrative Law Judge William A. Pope, II, by order dated October 20, 1998, certified for interlocutory appeal¹ the decision, prior to recusal, of Administrative Law Judge William R. Mullins granting respondent's motion to dismiss as to 4 out of 5 of the charges in the Administrator's Emergency Order of Revocation.² Although the parties have

¹ A copy of the Order Granting Interlocutory Appeal is attached.

² The Administrator's Emergency Order of Revocation was issued on April 15, 1998. By letter dated April 22, 1998, respondent waived the accelerated procedures normally
(continued . . .)

not raised the issue, we find that Judge Pope's order does not satisfy the criteria set forth in section 821.16 of our rules of practice.³

After Judge Mullins recused himself on October 5, 1998, the Administrator filed a petition for reconsideration of the order partially granting respondent's motion to dismiss. Judge Pope, who was assigned to the case following the recusal of Judge Mullins, declined to review Judge Mullins' order granting partial dismissal. Instead, Judge Pope decided, sua sponte, to treat the Administrator's petition for reconsideration as a motion for an interlocutory appeal. In granting an interlocutory appeal, Judge Pope stated:

[t]o proceed with this case, either with or without reconsidering Judge Mullins' September 17 order, raises the very substantial possibility of . . . creating a situation in which there is a substantial possibility that, on appeal of the entire proceeding, the full Board may find it appropriate to remand the case for hearing on issues which were dismissed prior to -- and, thus, not considered at -- the hearing. Repeated hearings are in neither the public interest nor the interest of the parties, as they are time-consuming, delay a final disposition of the case, and are expensive to all involved. A

(continued . . .)

associated with emergency proceedings.

³ Section 821.16, 49 C.F.R. Part 821, provides, in relevant part, as follows:

§ 821.16 Appeals from law judge's interlocutory rulings and motions

Rulings of law judges on motions may not be appealed to the Board prior to its consideration of the entire proceeding, except in extraordinary circumstances. . . . An appeal shall be disallowed unless the law judge finds, either on the record or in writing, that to allow such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. . . .

decision by the full Board, before the hearing, as to which issues should be considered at the hearing will virtually eliminate the possibility of such a remand, and I, therefore, find that an interlocutory appeal to the Board is the appropriate course of action. . . .

Order Granting Interlocutory Appeal at 4-5.

Aside from the fact that a different law judge from the one who granted the motion to dismiss has been called upon to rule on a petition for reconsideration of that motion, the potential consequences cited by Judge Pope as the basis for granting the interlocutory appeal are no different from other instances in which we have found ourselves constrained to remand a case for further proceedings after deciding that a charge was improperly dismissed. Such a circumstance, however inefficient and inconvenient it might be in a given case, neither creates a substantial detriment to the public interest nor amounts to undue prejudice to a party. An interlocutory appeal is thus not warranted.⁴

ACCORDINGLY, IT IS ORDERED THAT:

1. The law judge's order granting an interlocutory appeal is reversed; and
2. The case is remanded.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

⁴ Consistent with this ruling, and contra Judge Pope, we think a successor law judge does possess the discretion to review prior pre-hearing rulings.